

Amendment No. 4 to HB0386

Fitzhugh
Signature of Sponsor

AMEND Senate Bill No. 258*

House Bill No. 386

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1 . Tennessee Code Annotated, Title 44, Chapter 17, is amended by adding the following as a new part 7:

Section 44-17-701. This part shall be known and may be cited as the "Commercial Breeder Act".

Section 44-17-702. As used in this part, unless the context otherwise requires:

(1) "Adult companion animal" means a dog or a cat that is over one (1) year of age or has reached sexual maturity, whichever occurs first;

(2) "Cat" means any live cat of the species *Felis catus*;

(3) "Commercial breeder" means any person who maintains under their immediate control twenty (20) or more unsterilized adult female dogs or cats in this state for the purpose of sale of their offspring as companion animals;

(4) "Commissioner" means the commissioner of health;

(5) "Companion animal" means any dog or cat as defined in this part;

(6) "Dog" means any live dog of the species *Canis familiaris*;

(7) "Person" means any individual, firm, corporation, partnership, association, or other legal entity; and

(8) "Releasing agency" means a pound, animal shelter, humane society, animal welfare organization, society for the prevention of cruelty to animals, or other similar entity or home-based rescue that releases companion animals for adoption.

Section 44-17-703.

(a) An application for a license as a commercial breeder shall be made to the commissioner on a form provided by the commissioner, which shall contain such information as the commissioner may reasonably require.

(b) Each application for a license shall be accompanied by a license fee established by the commissioner based upon the number of unsterilized adult female dogs or cats maintained under the applicant's immediate control in this state for the purpose of selling their offspring as companion animals.

Section 44-17-704.

(a) The commissioner shall issue a license to an applicant after determining:

(1) Through an inspection, that the premises are suitable as a facility for commercial breeding and finding that the premises conform to this part and the rules and regulations promulgated pursuant to this part;

(2) The applicant has a valid sales tax registration number and is in good standing with the Tennessee department of revenue;

(3) The applicant has never been convicted of a violation of §39-14-212, at any time, or convicted of any other criminal offense involving an animal as set out in title 39, chapter 14, part 2, for a period of ten (10) years immediately preceding the date of the application; and

(4) The applicant does not operate or maintain a controlling interest in any releasing agency.

(b) Each license shall be issued only for the premises and to the person or persons named in the application and shall not be transferable or assignable.

(c) Licenses shall be posted in a conspicuous place on the licensed premises.

(d) License numbers shall be included on all of the licensee's invoices, advertisements or promotions that pertain to a companion animal, including but not limited to, newspapers, internet, radio, or flyers.

(e) Any written materials that pertain to a companion animal, including but not limited to, the license and the companion animal's bill of sale, shall include in bold print the statement:

This license does not certify that the companion animal being sold has been examined by or is under the care of a licensed veterinarian.

Section 44-17-705.

(a) A license, unless sooner suspended or revoked, shall be renewable annually upon application and payment of the renewal fee by the licensee provided such licensee has complied with the requirements of this part as confirmed by an annual inspection conducted by the commissioner.

(b) Each fee for renewal of a license shall be based upon the number of unsterilized adult female dogs or cats maintained under the licensee's immediate control in this state for the purpose of selling their offspring as companion animals.

Section 44-17-706.

(a) The commissioner may refuse to issue or renew, revoke, or suspend a license of any commercial breeder or impose any other lawful discipline against a licensee for any of the following reasons:

(1) A violation by the licensee of the Tennessee Consumer Protection Act of 1977, codified in title 47, chapter 18, part 1, that relates to the operation of dog kennels or commercial dog breeding;

(2) Willful falsification of material information contained in the application;

(3) The licensee's conviction, or that of any responsible officer of the licensee, for any criminal offense involving an animal set out in title 39, chapter 14, part 2, within the previous ten (10) years; or

(4) The licensee's nonconformance with this part or the rules and regulations of the commissioner of agriculture promulgated pursuant title 44, chapter 17 or the commissioner of health pursuant to § 44-17-713.

When the commissioner of health promulgates rules pursuant to §44-17-713, such rules shall govern the regulation of this part.

(b) In addition to or in lieu of any other disciplinary actions, the commissioner may impose a civil penalty not to exceed one thousand dollars (\$1,000) for each violation; each day of continued violation constitutes a separate violation.

(c) Any commercial breeder aggrieved by a final order of the commissioner issued under this section may appeal such order in accordance with the Uniform Administrative Procedures Act, codified in title 4, chapter 5.

(d) The commissioner is authorized to apply to courts of competent jurisdiction for writs of injunction for the enforcement of this part. It is the duty of the several district attorneys general to represent the commissioner when called upon to do so.

(e) If the commissioner imposes discipline on a licensee or unlicensed person in a disciplinary contested case proceeding, the licensee or unlicensed person may be required to pay the actual and reasonable costs of the investigation and prosecution of the case.

Section 44-17-707.

(a) As a prerequisite to renewal, each commercial breeder shall file an annual report containing the following information:

(1) The number of dogs or cats in the possession of the commercial breeder on the date the report is filed;

(2) The number of dogs or cats sold during the reporting period, the names and addresses of the persons to whom they were sold, and the sale price for each transaction;

(3) The number of dogs and cats bought during the reporting period and the names and addresses of the persons from whom they were bought; and

(4) The number of dogs and cats received by the commercial breeder during the reporting period under circumstances other than purchase and the names and addresses of the persons from whom they were obtained.

(b) A commercial breeder shall also make and keep such records as the commissioner may prescribe with respect to each purchase and sale of a dog or cat made by such breeder.

Section 44-17-708.

(a) The premises of any commercial breeder shall be made available to the commissioner or the commissioner's representative for inspection during normal business hours. The commissioner or the commissioner's representative shall make or cause to be made such inspections or investigations of the premises and records as considered necessary.

(b)

(1) If an inspection reveals a violation of this part or departmental rules promulgated to implement this part, the commissioner shall give the commercial breeder a detailed list of the violations found during the inspection.

(2) The commercial breeder shall have thirty (30) days from the date of the inspection to correct all violations contained on the list provided by the commissioner.

(3) At the end the thirty (30) day period, the commercial breeder shall notify the department in writing of the actions taken to correct such violations. The premises of the commercial breeder may be reinspected to determine compliance with this part or applicable rules and regulations.

If all violations contained on the list have been corrected and no other violations found, no further action shall be taken against the commercial breeder with regard to those violations.

(4) If at the reinspection, the commissioner finds that the commercial breeder has not corrected all violations on the list, the commissioner may assess a civil penalty of fifty dollars (\$50) up to one thousand dollars (\$1,000) per violation of this part or the rules promulgated hereunder.

Section 44-17-709. The commissioner shall notify the applicable local law enforcement agency if an inspection reveals, or there is credible evidence to believe, a violation of title 39, chapter 14, part 2, exists on the premises.

Section 44-17-710.

(a) It is a violation of this part for any commercial breeder to advertise, sell, or offer to sell, any companion animal unless the commercial breeder has a valid license from the commissioner.

(b) The commissioner may assess a civil penalty of fifty dollars (\$50) up to one thousand dollars (\$1,000) per violation of this section. Each day of continued violation constitutes a separate violation.

Section 44-17-711.

(a) If the commissioner has reason to believe that a person has caused or is causing a violation of this part or the rules and regulations promulgated under this part, then the commissioner may initiate proceedings in either the chancery court of Davidson County or the chancery court of the county where the violation is occurring for injunctive relief to prevent the continuance of the violation or to correct the conditions resulting in, or about to result in, the violation. Such injunction shall also prohibit the sale of companion animals by such person until the person is in compliance with this part or the rules and regulations promulgated under this part.

Section 44-17-712. No provision of this part authorizes the commissioner to confiscate cats or dogs in the possession of, or maintained by, a commercial breeder. If it comes to the attention of the commissioner that a violation of title 39, chapter 14, part 2, is occurring on the property of a commercial breeder, then the commissioner shall follow the procedure set out in §44-17-709.

Section 44-17-713. The commissioner may promulgate such rules and regulations as are reasonably necessary to implement this part including, but not limited to, requiring criminal background checks. Such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Section 44-17-714. Any person who possesses or maintains twenty (20) or more adult female dogs or cats in this state for the purpose of selling their offspring as companion animals, whether licensed pursuant to this part or unlicensed, who is in violation of the provisions of this part or any rule promulgated pursuant to this part shall be required to reimburse any municipal, county or state government for any costs reasonably and necessarily incurred in transporting, treating, feeding, maintaining or otherwise caring for any dog or cat possessed or maintained in violation of this part. Any security posted pursuant to §39-14-210, may be used to reimburse the applicable governmental entity or entities for costs incurred pursuant to this part but the reimbursement required shall not be limited to the amount of posted security.

Section 44-17-715.

(a) There is hereby established within the general fund, a commercial breeder act enforcement and recovery account, hereinafter the "account". All fees received for licenses issued or renewed and all civil penalties collected under the provisions of this part shall be deposited into the account, together with all amounts collected from commercial breeders pursuant to Title 67, Chapter 6, Part 2.

(b) Moneys within the account shall be invested by the state treasurer in accordance with the provisions of this Section 9-4-603 for the sole benefit of the account and any amounts remaining in the account at the end of the fiscal year shall remain available in subsequent fiscal years.

(c) In accordance with rules of the commissioner and applicable provisions of the general appropriation act, monies in the account shall be used:

(1) First, to pay for the cost of administering the provisions of this part; and

(2) Second, subject to the availability of funds, to pay any state or local government agency for its unreimbursed direct costs of transporting, care or feeding of any companion animals actually incurred solely as a result of a notification received under the provisions of § 44-17-709. It is hereby declared to be the legislative intent that to the extent practical, state and local agencies will enter into partnerships with releasing agencies to provide, at the releasing agencies' expense, for the transporting, care or feeding of any companion animals resulting from a notification received under the provisions of § 44-17-709.

SECTION 2. Tennessee Code Annotated, Title 47, Chapter 18, Part 1, is amended by adding the following language as a new, appropriately designated section:

Section 47-18-1_.

(a) Notwithstanding any other law, and to be construed as supplementary to any other law, the following shall constitute a separate violation of this part:

(1) Each companion animal sold, offered for sale, or advertised while the commercial breeder is unlicensed or has had such license suspended or revoked; or

(2) Each unfair or deceptive statement, material omission, or action taken by a commercial breeder.

(b) Any commercial breeder who commits a violation of this section shall be subject to a remedial civil penalty for each separate violation not to exceed one thousand dollars (\$1,000).

(c) Upon reason to believe that a commercial breeder is selling dogs or cats without the license required by title 44, chapter 17, part 7, the attorney general and reporter, after consultation with the director of the division of consumer affairs, may issue a pre-filing request for consumer protection information in accordance with §47-18-106. Should a person deny the representative access to the premises, the attorney general and reporter shall petition, without cost or bond, any circuit or chancery court of competent jurisdiction for an order granting access to such premises and records. The provisions of this part shall apply to the issuance of such request.

SECTION 3. For the purpose of promulgating rules and regulations necessary to effectuate the purposes of this act, and for notifying the public, employing staff and making other necessary preparatory arrangements, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2010, the public welfare requiring it.